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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,057	11/22/2000	Henning Von Spreckelsen	44257.830001	7735

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EXAMINER	
HICKS, ROBERT J	
ART UNIT	PAPER NUMBER
3781	
MAIL DATE	DELIVERY MODE
02/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/701,057	VON SPRECKELSEN ET AL.	
	Examiner	Art Unit	
	ROBERT J. HICKS	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 January 2009*.

2a)☒ This action is FINAL. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/10/2006*.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Reply Brief

1. In view of the supplemental reply brief filed on January 14, 2008, and the decision from the Board of Appeals filed on January 29, 2009, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Anthony D Stashick/
Supervisory Patent Examiner, Art Unit 3781

.Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 16 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gach (4,815,618) in view of Graboski et al. (6,117,506) [hereinafter Graboski] and further in view of Flanagan (6,082,568).

Regarding Claims 16 and 12, the patent to Gach - a tamper indicating dispensing closure and container - discloses a thin walled plastic bottle assembly and process for bottling a fluid (Col. 2 Lines 1-4), comprising: a bottle-body (12) having a top-disposed open mouth for receiving a liquid (within 14); a neck-assembly having an open top portion and having an open bottom portion fused to said bottle-body so as to surround said open mouth after said bottle-body has been filled with a fluid (Fig. 3); a tearable sealing foil (56) bonded between said neck-assembly and said open mouth so as to seal said open mouth until such time as said foil is tom (Col. 3 Lines 62-64); and a resealable injection moulded cap (10) fitted to said top portion of said neck-assembly to provide a leak-free and resealable closure for said bottle-body after said foil has been torn (Col. 2 Lines 1-4).

Gach does not expressly disclose that the bottle body is extrusion blow molded and non-gas tight; however, the patent to Graboski – a multilayer bottle – discloses a container (Graboski, 10) that is extrusion blow molded and non gas-tight (Graboski, Col. 2 Lines 59-64, and Col. 3 Lines 11-24). Once the gas has been used to open the container top, and the bore device removed, the gas can escape from the container, making the container non-gas tight. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the Gach container to be extrusion blow molded and non gas tight, as suggested by Graboski, "for protecting its contents from degradation due to light" (Graboski, Col. 1 Lines 46-47).

The Gach and Graboski combination does not expressly disclose that the neck and cap assembly are both injection molded; however, the patent to Flanagan - a cap and container combination – discloses that the cap (Flanagan, 15) and the container (Flanagan, 1) can both be injection molded (Flanagan, Col. 6 Lines 45-47, Col. 7 Lines 1-3, and Col. 8 Lines 12-13). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the Gach and Graboski combination cap and container assembly using injection molded parts,–as suggested by Flanagan, as "The container caps and containers of the present invention are preferably mass produced." (Flanagan, Col. 8 Lines 12-13).

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gach in view of Graboski in view of Flanagan as applied to claim 12 above, and further in view of Kitahora et al. (6,076,334) [hereinafter Kitahora].

Gach in view of Graboski in view of Flanagan discloses all the limitations substantially as claimed, as applied to claim 12 above. The Gach, Graboski, and Flanagan combination does not expressly disclose a sterilization step for the foil; however, the patent to Kitahora – a system and method of sterile packaging – discloses a cap sterilization process (Kitahora, 26) for caps made with a metal sheet (Kitahora, Col. 3 Lines 4-10). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the Gach, Graboski, and Flanagan combination cap and container assembly by going through a sterilization process for the cap, as suggested by Kitahora, "to omit any sterilization treatment of plastic containers at the time of filling beverages" (Kitahora, Col. 1 Lines 39-41).

6. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gach in view of Graboski in view of Flanagan as applied to claim 12 above, and further in view of Kauffman et al. (4,141,680) [hereinafter Kauffman].

7. Regarding Claim 14, Gach in view of Graboski in view of Flanagan discloses all the limitations substantially as claimed, as applied to claim 12 above. The Gach, Graboski, and Flanagan combination does not expressly disclose that the bottles are extrusion blow molded in a rotary machine; however, the patent to Kauffman – a rotary stretch blow molding process – discloses blow molded containers that are processed

through a rotary machine (Kauffman, Fig. 1). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the Gach, Graboski, and Flanagan combination cap and container assembly by going through a rotary machine, as suggested by Kauffman, as "The container caps and containers of the present invention are preferably mass produced." (Flanagan, Col. 8 Lines 12-13).

8. Regarding Claim 15, Gach in view of Graboski in view of Flanagan in view of Kauffman discloses all the limitations substantially as claimed, as applied to claim 14 above; further, Flanagan teaches each bottle body is passed directly to a fluid filling station (Flanagan, Col. 8 Lines 21-24).

Conclusion

9. This is a request for reconsideration of applicant's earlier Application No. 09/701,057. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, THIS ACTION IS MADE FINAL even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

/Anthony D Stashick/
Supervisory Patent Examiner, Art Unit 3781